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**REMARKS** 

Applicants appreciate the Examiner's thorough consideration provided the present

application. Claims 1-3, 5, 7-11, 13, 14, 16-21, 28-32, 34, 36 and 38 are now present in the

application. Claims 6, 15, 33, 35, 37 and 39 have been cancelled. Claims 1, 11, 28 and 30 are

independent. Reconsideration of this application, as amended, is respectfully requested.

Reasons For Entry Of Amendments

As discussed in greater detail hereinafter, Applicants respectfully submit that the

rejections under 35 U.S.C. § 112 and 103(a) are improper and should immediately be withdrawn.

Accordingly, the finality of the Final Office Action mailed on June 2, 2005 should be withdrawn.

If the Examiner persists in maintaining his rejections, Applicants submit that this

Amendment was not presented at an earlier date in view of the fact that Applicants are

responding to a new ground of rejection set forth in the Final Office Action. In accordance with

the requirements of 37 C.F.R. §1.116, Applicants respectfully request entry and consideration of

the foregoing amendments as they remove issues for appeal.

Claim Rejections Under 35 U.S.C. §112

Claims 33, 35, 37 and 39 stand rejected under 35 U.S.C. § 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter which

Applicants regard as the invention. This rejection is respectfully traversed.

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As the Examiner will note, claims 33, 35, 37 and 39 have been cancelled to timely

advance the prosecution of the application. Accordingly, this rejection has been obviated and/or

rendered moot. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second

paragraph, are therefore respectfully requested.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-3, 5-11, 13-21 and 28-39 stand rejected under 35 U.S.C. §103(a) as being

unpatentable over Metz et al., U.S. Patent No. 5,666,293 (referred to hereinafter as Metz) in view

of Shimomura et al., U.S. Patent No. 6,473,858 (referred to hereinafter as Shimomura). This

rejection, insofar as they pertain to the present claims, is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is

not being repeated here.

In light of the foregoing amendments to the claims, Applicants respectfully submit that

this rejection has been obviated and/or rendered moot. Without conceding to the propriety of the

Examiner's rejection, but merely to timely advance the prosecution of the application, as the

Examiner will note, independent claims 1, 11, 28 and 30 have been amended.

Independent claim 1 recites a combination of elements including "a code detecting unit

for detecting a software code included in an advertisement broadcasting signal during only

broadcasting of an advertisement".

Independent claim 11 recites a combination of steps including "detecting a software code

included in an advertisement broadcasting signal during only broadcasting of an advertisement".

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Independent claim 28 recites a combination of elements including "a code detecting unit

for receiving a digital advertisement broadcasting signal during only broadcasting of an

advertisement".

Independent claim 30 recites a combination of steps including "detecting a software code

included in a digital advertisement broadcasting signal during only broadcasting of an

advertisement".

Support for the above combinations of elements and steps can be found on paragraph

bridging pages 7 and 8. Applicants respectfully submit that the combinations of elements set

forth in claim 1 and 28 and the combinations of steps set forth in claim 11 and 30 are not

disclosed or suggested by the references relied on by the Examiner.

Metz discloses a set-top terminal device for storing a version number for an operating

system that it is currently running, and a broadcast data stream which includes data identifying

the version number of the operating system being broadcast for the particular type of terminal. In

addition, the set-top terminal device actually captures an operating system from the broadcast if

the broadcast version number is different (e.g. higher or lower) than the version number of the

operating system that the terminal is currently running.

However, Metz fails to teach any device for or any step of detecting a software code

included in an advertisement broadcasting signal during only broadcasting of an advertisement

as recited in claims 1, 11, 28 and 30. In particular, Metz merely discloses that the DET 102 may

automatically check the time or number of power-off cycles since the last upgrade to trigger an

operating system upgrade routine (see col. 9, lines 21-24). Metz nowhere teaches that the DET

102 will detect a software code included in an advertisement broadcasting signal during only

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broadcasting of an advertisement. Therefore, Metz fails to teach the combinations of elements

set forth in claim 1 and 28 and the combinations of steps set forth in claim 11 and 30.

Unlike Metz, the presently embodied invention provides an apparatus and method for

upgrading a software of a television broadcasting signal receiving apparatus, which is capable of

improving convenience for the user by detecting the new version of software during only

broadcasting of advertisements and automatically upgrading the software when the user watches

the advertisements. These features are clearly absent from Metz.

With regard to the Examiner's reliance on Shimomura, this reference has only been relied

on for its teachings related to the advertisement broadcasting signal. Shimomura also fails to

disclose the above combinations of elements and steps as set forth in amended independent

claims 1, 11, 28 and 30. Thus, Shimomura fails to cure the deficiencies of Metz, and thus the

combination of these references (assuming arguendo that they are combinable) would not render

the claimed invention obvious.

Accordingly, the present invention as recited in claims 1, 11, 28 and 30 and their

dependent claims (due to their dependency) is patentable over the applied references, and the

rejection should be withdrawn.

CONCLUSION

All the stated grounds of rejection have been properly traversed and/or rendered moot.

Applicants therefore respectfully request that the Examiner reconsider all presently pending

rejections and that they be withdrawn.

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It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

In the event there are any matters remaining in this application, the Examiner is invited to contact the undersigned at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

Esther H. Chong

Reg. No. 40,953

EHC/GH/mmi

P. O. Box 747 Falls Church, VA 22040-0747

(703) 205-8000